

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
DAVID B. SMITH)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	CASE NUMBER WPC-07-0170

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

David B. Smith (hereinafter "the Respondent") is the owner of a residential property located on Prospect Road in Giles County, Tennessee (hereinafter "the site"). Service of process may be made on the Respondent at 4080 Prospect Road, Prospect, Tennessee, 38477.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act.

Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

The unnamed tributary to Richland Creek, referred to herein, is “waters of the state”, as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VI.

On July 6, 2007, division personnel conducted a complaint inspection at the site. Automobile oil waste was observed in the unnamed tributary to Richland Creek, downstream of

the Respondent's property. Further inspection revealed that the oil waste has been deposited into the creek through a drain located in the top of a culverted portion of the creek that passes through the Respondent's property near a garage. Oil waste, rags, tire ramps and other related materials were observed to still be present in the Respondent's garage area. Oil waste was still present in and around the opening to the drain above the creek, clearly indicating that it was the source of the contamination.

VII.

During the course of investigating this matter, the division incurred damages in the amount of ONE HUNDRED EIGHT DOLLARS AND THIRTY-TWO CENTS (\$108.32).

VIOLATIONS

VIII.

By causing a condition of pollution to the unnamed tributary of Richland Creek as described herein, the Respondent has violated T.C.A. Section 69-3-114(a).

T.C.A. §§ 69-3-114(a) states:

- (a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

IX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 3 days of receipt of this Order, remove the accumulated oil waste from the affected stream utilizing hand methods and absorbent materials. Prior to commencing the cleanup activity the Respondent shall contact the Division of Water Pollution Control manager at the Columbia Environmental Field Office (CL-EFO) to discuss the exact methods and materials to be utilized, and shall not initiate any action until the division manager at the CL-EFO has approved the methods and materials to be utilized. The Respondent shall also notify and gain approval from neighboring landowners prior to entering their property to remove any oil waste, if present, from the streambed or banks adjoining their property. If it is determined that the Respondent's property is upstream of a county or municipal potable water supply intake, the Respondent shall immediately notify officials of the County or Municipal Water Supply Treatment Works. The division manager at the CL-EFO can be contacted by telephone at (931) 840-4170, and by correspondence at 2484 Park Plus Drive, Columbia, Tennessee, 38401.
2. The Respondent shall, within 10 days of receipt of this Order, submit documentation to the manager of the CL-EFO that all waste oil and all contaminated materials generated during the cleanup activity have been properly disposed of according to all applicable Federal, State, and Local rules and regulations. This documentation shall include hauling and disposal receipts.

3. The Respondent shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS (\$5,000.00) to the division, hereby ASSESSED to be paid as follows:

a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250.00).

b. If the Respondent fails to comply with Part VIII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND EIGHT HUNDRED AND SEVENTY FIVE DOLLARS (\$1,875.00), payable within 30 days of default.

c. If the Respondent fails to comply with Part VIII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND EIGHT HUNDRED AND SEVENTY FIVE DOLLARS (\$1,875.00), payable within 30 days of default.

4. The Respondent is hereby assessed DAMAGES in the amount of FIVE HUNDRED SIXTEEN DOLLARS AND THIRTY NINE CENTS (\$516.39) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

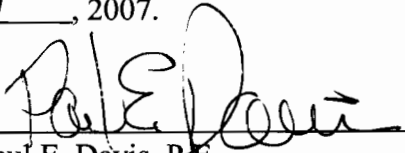
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the

Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 3rd day of August, 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow any Respondent to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Unit, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.

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Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548". All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.